

National Institutes of Health

Minutes of the Meeting of Ethics Coordinators and Deputy Ethics Counselors

**December 10, 2002 - 1:00 pm to 2:30 pm
Bldg 50, Room 1227**

1. Welcome and Introductions

2. Use of Official Title in Outside/Personal Activities

To avoid the appearance that the government endorses or sanctions any specific activity or event, NIH employees are prohibited from using their official government position or title in an outside activity or in a personal capacity (5 CFR sec 2635.702).

- This prohibition includes outside activities such as teaching, speaking or writing, except when the title is listed as one of several biographical details and given no more prominence than other significant biographical details.
- An employee may use their title in connection with an article published in a scientific or professional journal, provided a disclaimer is used stating that the views expressed in the article do not necessarily represent the views of the agency or the United States Government.

A 1994 OGC memo appeared to permit the use of one's title in outside activities so government employees would not appear to be unemployed. The revised Standards of Ethical Conduct provide only certain circumstances when title/affiliation may be used in conjunction with an outside activity, as noted in the second bullet above.

ACTION: Holli Beckerman Jaffe will confirm official interpretation and inform the NIH ethics community..

3. Lobbying

The Anti Lobbying Act, a criminal statute, prohibits employees from using appropriated funds to attempt to influence a Member of Congress. The publicity and propaganda rider to the Department's appropriations bill also prohibits the use of appropriated funds to attempt to influence Congress OR any State legislature. These provisions are not intended to inhibit the necessary flow of information and communication between the Executive and Congressional Branches of government; they are intended to prevent any inappropriate or undue influence on Members of Congress. The Act applies only to lobbying with respect to legislation or appropriations, but the publicity and propaganda rider can be interpreted to also cover other types of legislative proposals. The publicity and propaganda rider carries with it the potential for a GAO audit of expenditures.

While agencies may use appropriated funds to produce materials that provide general factual information to interested parties, including outside organizations that engage in lobbying activities, agencies may **not** provide administrative assistance in the preparation of materials to be disseminated by outside groups or organizations encouraging the public to contact or lobby their Congressional representatives.

The Act does not prohibit government employees from participating in lobbying activities while they are on personal time, and applies to Special Government Employees. Though agencies have a “personal use policy” to permit the minimal use of government resources, it is strongly recommended that employees **not** use their government computer, phone, fax or other supplies to conduct personal lobbying activities, even when on personal time, as that would constitute use of appropriated funds for lobbying activities. A second rider to the Department’s appropriations bill prohibits the use of grant or contract funds from supporting any lobbying activities.

Questions were raised regarding whether peer reviewers, advisory committee members (SGEs), and/or grantees/contractors could be brought to the NIH for official duty and then engage in lobbying activities while they are here. Current policy does not provide a definitive answer.

ACTION: Gretchen Weaver will investigate and provide feedback as information becomes available.

It should be noted that the Anti Lobbying Act is different than the Hatch Act. While the Hatch Act covers personal partisan political activities, the Anti Lobbying Act covers lobbying activities associated with legislative or pending legislative issues.

4. Conflict of Interest Analysis for Sponsored Travel

41 CFR Part 304 provides guidance for the payment from a non-federal source for travel expenses. A conflict of interest analysis of 348 travel requests should be based on the “reasonable man” test, including the following relevant considerations found in 41 CFR Part 304-1.5:

- The identity of the non-Federal source;
- The purpose of the meeting or similar function;
- The identity of other expected participants;
- The nature and sensitivity of any matter pending at the agency affecting the interest of the non-Federal source;
- The significance of the employee’s role in any such matter; and
- The monetary value and character of the travel benefits offered by the non-Federal source.

Other considerations may include:

- Who is the employee, i.e., is the employee the IC Director or a bench scientist?
- How often has the employee traveled under this regulation?

Sponsored travel should not be used to conduct Agency business and NO payment can be made directly to the employee by a non-Federal source.

5. Other Items

Dr. Hausman informed attendees of a recent article about ethics problems in the private sector, as reported in Business Week. The article entitled [More Trouble in the Mouse House](#) discusses possible conflict problems at Disney Company.

Next Meeting: January 7, 2003
Bldg 31, Conference Room 7

Future Meetings:

Dates and locations are posted on the NIH Ethics Program web site at
<http://ethics.od.nih.gov>